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view.

Can you see the area of the  
sidewalk and the fence?

A Yes.

Q What you're saying is that --

A I can't pinpoint her exact  
location.

Q No, I know you can't.

It's somewhere in between the  
front of Anthony DiLeonardo's car and the  
rear of your car, correct, in between those  
two bumpers?

A Yes.

Q All right.

It's on the eastbound side of  
the road, correct?

A Yes.

Q Could you just be kind enough to  
put a circle there?

MR. CLARKE: Is that area even  
in this photograph?

Q To the best of your ability --

MR. CLARKE: It's not in the  
photograph.

1 Edward Bienz 260

2 Q To the best of your ability, can  
3 you circle it?

4 If you're saying it's impossible  
5 to do, then just tell me that.

6 A I'm not really comfortable  
7 circling it.

8 Q I didn't ask you if you're  
9 comfortable.

10 Are you telling me you can't  
11 accurately circle the area depicting the  
12 general location of your wife?

13 A General location?

14 Q Yes?

15 A Obviously, the other side of the  
16 vehicles.

17 Q Thank you so much.

18 Now, you said she started to  
19 back-pedal, right?

20 A Yes.

21 Q How much time from the time she  
22 got out of the car, walked forward, until  
23 she start to back-pedal?

24 A Short.

25 Q What does short mean?

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A Quick. You know, one fluid motion, however long it takes to take a few steps forward and a few steps back.

Q I wasn't there. I don't know how long it was.

Can you give me the best estimate possible?

A Seconds.

Q Five seconds, ten seconds?

A Less.

Q So less than what, 10, or no?

A Less than five.

Q Were you watching her that entire five seconds?

A Yes.

Q Other than seeing Anthony DiLeonardo get out of his car, you didn't see him do anything else at that point?

A No.

Q During that next five seconds, when your wife had walked forward and started coming back, did you hear anything?

A No.

Q Did you see anything or any

1 Edward Bienz 262

2 activity between the two men that got out of  
3 the car?

4 A Yes.

5 MR. SCHROEDER: One second. At  
6 the --

7 Q Your wife starts coming back to  
8 the car, correct?

9 A Yes.

10 Q She's back-pedaling.

11 A Yes.

12 Q How far does she back-pedal?

13 Does she reenter the car?

14 A No.

15 Q Where does she back-pedal to?

16 A Near the rear of the passenger  
17 side, the quarter panel, that area.

18 Q Your rear quarter panel?

19 A There in that vicinity.

20 Q Prior to reaching the rear  
21 passenger door?

22 Prior to reaching your rear  
23 passenger door?

24 A No.

25 Q Okay. Was she outside your rear

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passenger door?

A When?

Q When she back -- pedaled?

A No.

Q So tell me where she  
back-pedaled to?

MR. CLARKE: He just told you,  
the rear quarter panel.

Q Did she stop?

A Yes.

Q Was she positioned between your  
rear bumper and your rear door, rear  
passenger door?

A In that vicinity.

Q Your car is an Acura TL, four  
doors, right?

A Yes.

Q So you know what I'm talking  
about when I say, before rear passenger  
door.

She was before the handle of the  
rear passenger door, but behind your rear  
bumper?

A Somewhere in a that vicinity.

1 Edward Bienz 264

2 Q Was she on the road or the  
3 sidewalk?

4 A On the east side.

5 Q Were you watching her  
6 continuously when she back-pedaled and got  
7 in that position?

8 A No.

9 Q You know, or did she say  
10 something, as to why she started coming back  
11 to your car if her intent was, as you  
12 expressed it, to go speak to Anthony and  
13 Sophie to turn around?

14 A No.

15 Q How much time did it take for  
16 her to back-pedal?

17 MR. CLARKE: It's asked and  
18 answered.

19 MR. GRANDINETTE: I asked how  
20 long it took her to walk forward.

21 MR. CLARKE: He said it was a  
22 fluid motion, there and back.

23 MR. GRANDINETTE: Maybe I  
24 misunderstood.

25 Q Was it five seconds, there and

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back?

A Few seconds.

Q Did you hear anything in that  
five seconds?

A No.

Q Did you see anything in that  
five seconds, other than observing her walk  
there and back?

A No.

Q So you hadn't heard anything  
said at this particular time by any person?

A No.

Q Do you say anything to your  
wife?

A No.

The door was closed.

Q What happens next?

A I had noticed, when I was  
looking at the two guys, that it seemed like  
they were having a heated exchange, which I  
could only tell by body language.

Q When you said, sir, that you  
could tell by the two guys that they were  
having a heated exchange, I'm assuming then



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that that would be only after you directed your attention from looking over shoulder at your wife, back to your mirrors, or did you turn around further and look through the windshield at DiLeonardo and this other man?

A I don't recall. There was that dynamic, the whole situation. I don't know exactly how I see observed it, which angle, but I remember seeing it.

Q All right. You don't recall if you turned all the way around?

A I don't know if it was through the rear window or the mirror.

Q Okay. So could you explain to me in your own words, what you observed that led you to the conclusion that there was a heated exchange between these two individuals?

A Just the way they were standing.

Q So, describe for me, then, how Anthony DiLeonardo was standing?

MR. CLARKE: I'm going to object to not to interrupt the answer. He was still speaking when you asked your



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next question.

MR. GRANDINETTE: Would you read back the penultimate question, and let him finish his answer.

Q Did you finish your answer?

MR. CLARKE: He was in the middle of a word.

Q Did you finish answering the last question?

A Okay.

Q Are you done with your answer?

A It was by the way they were standing, and the hand gestures.

Q So let's talk about each individual first.

How was Anthony DiLeonardo standing?

A I don't remember specifically his exact stature, the way he was standing.

I remember them both leaning in towards each other, and then they kind of had both their hands moving, kind of like Italians, when they talk.

Q I want to talk about one guy at

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a time. Let's talk about one guy at a time.

Anthony DiLeonardo, from the  
time that you saw --

Did he move his position at all,  
from the time you first saw him get out of  
the car to the second time, five seconds  
later, that you saw him?

A I don't remember exactly.

Q His body language -- he was  
facing the smaller compact car?

A Yes.

Q Did you hear any word spoken, or  
any sound coming out of his mouth?

A No.

Q Could you hear words  
communicated, but you couldn't hear what was  
being communicated?

A I couldn't hear what they were  
saying.

Q I understand.

Let me try to clarify.

My question to you: Did you  
hear them speaking, but were unable to make  
out what they were saying, or did you not

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hear anything?

A I didn't hear anything.

Q You didn't hear a peep out of either man?

A No.

Q You could only visually observe Anthony DiLeonardo looking in the direction of this other individual, he was using his hands, gesturing at the other individual?

A Both parties.

Q I'm just talking about DiLeonardo right now, okay?

A Okay.

Q How was Anthony DiLeonardo gesturing with his hands?

A I remember his hands moving and him leaning towards the other vehicle.

Q When you say leaning, was he on the door? Where was he?

A He was he in between the cars. He was like he was leaning forward.

Q Was his driver's door in between himself and the other vehicle, or did he walk around his driver's door at this point?

1 Edward Bienz 270

2 A I don't recall.

3 Q Can you tell me the approximate  
4 distance between DiLeonardo's driver's side  
5 door and this other car's passenger side?

6 MR. SCHROEDER: At which point?

7 MR. GRANDINETTE: After the car  
8 pulled up.

9 Q How many feet apart were the  
10 cars?

11 MR. SCHROEDER: So before the  
12 car moved?

13 A I don't know.

14 They were close.

15 Q A foot, two feet?

16 A Not if he could get his door  
17 open.

18 Q Was Anthony DiLeonardo's door  
19 you all the way open?

20 A It had to be enough for him to  
21 get out.

22 Q Was his door all the way open,  
23 do you recall?

24 A All the way, I don't know.

25 Q Now you said you saw his hands,

1 Edward Bienz 271

2 right?

3 A Yes.

4 Q His hands were gesturing, right?

5 A Yes.

6 Q You saw both of his hands?

7 A Yes.

8 Q And you saw him with a clear and  
9 unobstructed view?

10 A From the best I could, from  
11 inside my vehicle.

12 Q Was there anything in his hands,  
13 when you saw him?

14 A No.

15 Q Now, let's talk about the other  
16 individual. You saw him.

17 When you look at him now, the  
18 second time, can you determine if he is a  
19 male or female?

20 A Well, he was bigger, so you'd  
21 assume he was a male.

22 Q I don't want you to assume  
23 anything, other than what you know.

24 I withdraw that.

25 Did you make an assumption that

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he was a male?

A Yes.

Q What did you make that  
assumption on?

A Because of his size.

Q Give me a description of his  
size?

A Stocky, male white.

Q Male white.

How tall?

A Average height. Five-ten,  
five-11.

Q How much did he weigh?

A 225.

Q How big was Anthony DiLeonardo?

A Five-9, 167.

Q So the other man was, based upon  
your perception, larger?

A Yes.

Q Where was this man standing?

A Outside his driver's door.

Q Looking over the hood of his  
car?

A Over the car.

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Q What was he doing with his hands?

A The same thing, gesturing an at the other driver.

Q What was he doing?

A Pointing, waving them.

Q Okay. So waving his hands, pointing.

Did you have a clear and obstructed view of this other individual's hands?

A Yes.

Q At that point in time, is it fair to say --

MR. SCHROEDER: I'm just going to object. I'm sorry.

You're saying a clear and unobstructed view.

You have a guy looking through his car.

Is he still in his car?

MR. GRANDINETTE: Yes.

Q You're in your car?

A Yes.



1 Edward Bienz 274

2 From what I could see, the view  
3 that I could see.

4 Q You saw his hands?

5 A Yes.

6 MR. CLARKE: He doesn't know  
7 anything without you telling him.

8 He won't assume anything,  
9 without you telling him.

10 You're sitting in your car.

11 You have to tell him what your  
12 point of view is, what your clear and  
13 unobstructed view is.

14 You have to answer him, if you  
15 did or you didn't.

16 Because he's going to assume  
17 nothing at all, that you don't tell  
18 him.

19 Q Mr. Bienz, you already told me  
20 you're not sure if you watched through your  
21 mirrors or you turned all the way around,  
22 right?

23 A Yes.

24 Q You did say that you -- now that  
25 your attention is drawn to these men,

1 Edward Bienz 275

2 there's an angry exchange between them, and  
3 they're using their hands, pointing and  
4 gesturing to each other as if they're in an  
5 oral or verbal altercation, right?

6 MR. SCHROEDER: Objection.

7 A Yes.

8 Q You see your wife back-pedal,  
9 and then you look, and you see that  
10 exchange, right?

11 A Yes.

12 Q You're confident at this point  
13 in time, neither man has a weapon in their  
14 hand, right?

15 A Yes.

16 Q As a police officer, and based  
17 upon your training, that's important to  
18 know, right, whether or not anybody has a  
19 weapon?

20 A Yes.

21 Q At this point, you're not aware  
22 that anybody possess a weapon, right?

23 A Yes.

24 Q Did you know Anthony was  
25 carrying that night?

1 Edward Bienz 276

2 A No.

3 Q Did he ever tell you, did you  
4 ever see his ankle holster?

5 A Yes.

6 Q You learned only after shots  
7 were fired, later on, that Anthony had a  
8 gun, right?

9 A Yes.

10 Q We'll get into that.

11 So, how long do you make these  
12 observations of these two men?

13 A Few seconds.

14 Q How long is this -- what you  
15 perceive to be an oral exchange between the  
16 two men? How long does that go on?

17 A Ten seconds.

18 Q During that ten seconds, does  
19 either man move their location, or do  
20 anything other than what you've already  
21 described?

22 A No.

23 Q After that ten seconds elapsed  
24 sir, what happens next?

25 A I notice that the compact car,

1 Edward Bienz 277

2 the operator must have gotten back in, and  
3 started backing up.

4 Q Okay.

5 Now, when you observed this  
6 exchange, over the course of this ten  
7 seconds, did you take any action,  
8 individually?

9 A No.

10 Q Did you say anything, or do  
11 anything?

12 A No.

13 Q Discuss anything to your wife,  
14 honey, get back in the car immediately, or  
15 words to that effect?

16 A No.

17 Q From the time that the driver  
18 got out of the cab and got back into the  
19 car, did you hear one word spoken?

20 A No.

21 Q He did you hear words exchanged,  
22 but were unable to make out what was  
23 exchanged?

24 A No.

25 Q Do you believe, given the

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1 location of your car, that you were in a  
2 distance close enough that you would have  
3 heard an angry exchange between two men, if  
4 they were screaming back and forth at each  
5 other?  
6

7 MR. CLARKE: Objection to the  
8 form of the question. Speculative.

9 A I don't know.

10 MR. SCHROEDER: Objection.

11 Q How old were you that day?

12 A 26.

13 Q So if the guys were screaming at  
14 each other, fuck you, fuck you, would you  
15 have been close enough to hear that?

16 MR. CLARKE: Objection.

17 His doors were closed.

18 I'm not going to let him  
19 speculate.

20 He's not answering that  
21 question.

22 Q If somebody represented to you  
23 that on February 27th, 2011, that there was  
24 a heated verbal exchange, men yelling back  
25 and forth at each ear, fuck you, I'm going

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to kill you, or words to that effect,  
yelling, circumstantially, based upon your  
location, would you tell me, I don't think  
that's possible, because I was so close, I  
would have heard it?

MR. CLARKE: Objection.

You can answer it.

MR. SCHROEDER: Objection.

A I didn't hear anything.

Q No, I know that.

I'm asking you now, I'm asking  
you -- you understand my point?

You're an investigator, right?

MR. CLARKE: Objection. You're  
asking him to speculate.

MR. GRANDINETTE: I'm not asking  
him to speculate.

Q So, at any rate, you didn't hear  
one peep out of one person?

A No.

Q So the cab gets in, and he backs  
up -- you observe -- the small compact car,  
you still don't know it's a cab yet, no?

Only thing you know, it's a



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small compact white car?

A Yes.

Q Do you see any other occupant in the car?

A No.

So is it your understanding at that point, there's only one male, five-11, two something, 220 pounds, right?

MR. SCHROEDER: Objection.

A Yes.

Q Their car begins to back up. Anything unusual about the manner in which he backed up?

A No.

Q Any noise, screeching the wheels?

A Not that I recall.

Q High speed retreating, anything unusual?

A No.

Q Just backs up?

A Yes.

Q How do you observe the car backs



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up?

MR. SCHROEDER: Objection to  
form.

Q Again, through your mirrors are  
you looking directly?

A Well, I had exited my car.

As I was walking towards the  
back, I noticed the car had moved backward,  
traveled a distance backwards.

Q So when was it that the car  
began to go backwards, after you exited your  
car?

A Sometime during my exit, or  
previous to.

Q So simultaneously with your  
exiting your car, you saw the cab -- this  
white compact car begin to back up?

MR. SCHROEDER: Objection to  
form.

A No, I notices it had traveled --  
started to move backward.

Q So the car was moving as you  
were exiting?

A Yes.

1 Edward Bienz 282

2 Q Now, I just want to get into  
3 time again for a second.

4 There's this ten-second angry  
5 change, cab driver gets in the car. Begins  
6 to go backwards.

7 A Right.

8 Q After the ten seconds and the  
9 cabbie gets in the car, how much time goes  
10 by until you begin to exit and you observe  
11 the car going backward?

12 MR. CLARKE: Objection.

13 Misstates the facts testified.

14 Please rephrase the question.

15 Q You can answer.

16 A Can you repeat?

17 Q Sure. You said for us that this  
18 exchange lasted ten seconds. After the  
19 exchange, the cabbie gets back in the car,  
20 right, driver's side?

21 A Yes.

22 Q You get out of your car, and the  
23 cab's going backward?

24 A Yes.

25 Q How much time went by between

1 Edward Bienz 283

2 the time that the cab -- the person -- the  
3 driver went to get back into the compact  
4 car, and you exit your car and observe the  
5 car driving backward?

6 MR. SCHROEDER: Objection.

7 MR. CLARKE: I'm objecting. He  
8 said it was either simultaneously or  
9 immediately thereafter.

10 You're changing the facts of the  
11 question, so it's an improper  
12 question.

13 Q How much time?

14 MR. CLARKE: You're not  
15 answering that.

16 You have misstated his  
17 testimony.

18 You don't like it, for whatever  
19 reason, but it's his testimony.

20 MR. GRANDINETTE: Please, Chris.

21 Q Sir, how much time went by from  
22 the time that the operator of the white  
23 compact car got back into his car to the  
24 time you got out of the car?

25 MR. SCHROEDER: Objection to

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form.

A I don't know.

Q Give me an estimate.

MR. SCHROEDER: Objection to  
form.

MR. CLARKE: I'm going to object  
as well.

A Seconds.

Q Two seconds?

A In that -- short amount of time.  
Very quickly.

Q So, I just want to go over the  
sequence of events again. Right.

Anthony pulls up behind your  
car, relatively quickly after you stop?

MR. SCHROEDER: I have to  
object. Asked and answered.

MR. CLARKE: Asked and answered.

MR. GRANDINETTE: It's okay.

You can make your objections.  
That's fine.

MR. SCHROEDER: I have.

MR. CLARKE: If we're going to  
talk about extra time. We're not

1 Edward Bienz 285  
2 going to have extra time.

3 MR. GRANDINETTE: Guys, no  
4 speaking objections.

5 MR. CLARKE: It's not a speaking  
6 objection.

7 MR. GRANDINETTE: I'm going  
8 through the time sequence to make sure  
9 he has it right.

10 MR. CLARKE: You've gone over  
11 it.

12 MR. GRANDINETTE: Fine. We've  
13 got to do it again.

14 MR. CLARKE: Seven hours, we're  
15 walking out the door.

16 MR. GRANDINETTE: That's fine.  
17 We'll address that.

18 Q You're at the corner of Tippin  
19 and Oakwood. Anthony pulls up a matter of  
20 ten seconds after you stop, right?

21 MR. SCHROEDER: Objection.

22 A Less.

23 Q Okay. Less than ten seconds.

24 A I said it was a short amount of  
25 time -- pretty quickly thereafter.

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Q Within ten seconds after that,  
Anthony's out of his car -- this other  
person is out of his car, right?

MR. SCHROEDER: Objection.

MR. CLARKE: Objection.

Misstatement of prior testimony.

A The whole sequence of events is  
fast; it's dynamic -- I'm really -- I'm  
guessing with the time. You're asking me to  
put a time on something that I wasn't  
running a stopwatch on.

I'm trying to answer your  
question here. But, I'm not really  
understanding what you're asking me. And it  
seems like you're -- when I tell you a  
specific time is a guess or an estimate,  
then you're using it as that's the amount of  
time it took.

I already explained to you  
before that it's not that specific amount of  
time. I explained it to you.

Q Sir, I appreciate your  
frustration, okay. I'm going to ask you to  
do the best you can.



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From the time that Anthony  
stopped behind you to the time that you're  
out of your car, seeing the cab go  
backwards, total amount of time, how much  
time goes by?

MR. CLARKE: He's already  
provided an estimate to that question.

MR. SCHROEDER: Objection.

MR. CLARKE: I'm objecting,  
directing him not to answer.

MR. GRANDINETTE: No, he hasn't.

MR. CLARKE: He's already given  
you an answer.

MR. GRANDINETTE: No, he hasn't.  
Chris, please, enough.

I've asked him to do --

MR. CLARKE: You said to me many  
times, if he can estimate, tell me.

He just told you very candidly,  
he can't tell you a time. Then you  
say, what's the time? I can't tell  
you the time.

MR. GRANDINETTE: Is that your  
objection?



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MR. CLARKE: I know you're  
frustrated.

PLAINTIFF'S COUNSEL: Please  
stop. I'm not frustrated.

MR. CLARKE: I'm paraphrasing  
you.

MR. GRANDINETTE: I'm not  
frustrated.

MR. CLARKE: You know you're  
frustrated. Mr. Bienz, how much time?  
I can't tell you.

Q Mr. Bienz, as you sit here --

MR. GRANDINETTE: Please stop  
interfering my with deposition.  
Please, stop.

MR. CLARKE: Continue.

Q Sir, from the time that the cab  
pulled up to the time that the cab is  
backing up, after you get out of your car,  
how much time, approximately, went by?

MR. CLARKE: Over objection, you  
can answer.

A If I had to speculate amount of  
time, probably 15 to 20 seconds.

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Edward Bienz

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Q Now, after you get out of your car, what happens next?

A I walk to my rear driver's side of the car.

Q Why did you get out of your car?

A Because I had seen my wife back-pedaled. I saw something was going on behind me.

Q So you got out of your car for what specific purpose?

A To find out what was going on.

Q Between Anthony and this other individual?

A Just in general, what was going on.

Q When you got out of your car, did you have a plan to communicate with somebody, to find out what was going on?

A No.

Q What did you do after you got out of the car?

A I went and stood in the vicinity of my wife.

Q Was your wife still in the same

1 Edward Bienz 290

2 location that you described earlier, in  
3 Plaintiff's 122, between your rear bumper  
4 and your rear passenger door?

5 A Near or about.

6 Q So she was in that general area?

7 A Yes.

8 Q So how did you get to her?

9 Where did you walk?

10 A Along the driver's side of the  
11 car.

12 Q You walked from the front of  
13 your driver's side to the rear, in between  
14 Mr. DiLeonardo's front bumper and your rear  
15 bumper?

16 A No, just towards the rear of my  
17 car. It was in the general vicinity of the  
18 rear -- the trunk area.

19 Q Okay. So tell me, where in the  
20 rear vicinity did you go? Did you go to the  
21 rear driver's side, or did you walk over to  
22 your wife to communicate directly with your  
23 wife?

24 A No. I was somewhere near the  
25 rear bumper.

1 Edward Bienz 291

2 She was in about the area.

3 Q Then you were on the rear bumper  
4 of the passenger side of your car?

5 A No. The rear bumper, somewhere  
6 between the driver's -- somewhere at the  
7 rear of the car.

8 Q The rear of your car?

9 A Yes.

10 Q But your goal was to speak to  
11 your wife, right?

12 A I walked over to her.

13 Q Were you facing your wife?

14 A Yes.

15 Q And you were looking at your  
16 wife after you walked over to her, right?

17 A Yes.

18 Q Did you utter any words to your  
19 wife?

20 A Yes.

21 Q What did you say to your wife?

22 A I asked her what was are going  
23 on.

24 Q Okay.

25 What happened next?

1 Edward Bienz 292

2 A She told me she didn't know,  
3 that they were yelling.

4 Q And they were yelling, did you  
5 perceive that -- I know you didn't hear  
6 anything.

7 Did you perceive that to be  
8 Anthony and this other individual who got  
9 back in the car?

10 A Yes.

11 Q And how long did it take for you  
12 to exit your car, walk between the two cars  
13 and communicate this with your wife?

14 A Two seconds.

15 Q Now, would it be fair to say  
16 that your wife was facing you, and you were  
17 facing her, when you were having that  
18 conversation?

19 A Yes.

20 Q What happened next?

21 A I hear three shots.

22 Q What do you do after you hear  
23 these three shots?

24 A I cover.

25 Q In relation to your conversation

1 Edward Bienz 293

2 with your wife, did you hear the three shots  
3 immediately after communicating with her,  
4 your wife?

5 A I don't remember.

6 Q Was there any gap in time  
7 between your conversation with your wife and  
8 hearing the three shots?

9 A It was quick.

10 Q By quick, sir, how much time is  
11 quick? Two seconds, a second?

12 A I don't know. It was fast.

13 Q Is it your understanding that it  
14 happened almost simultaneously with the end  
15 of that brief conversation between you and  
16 your wife?

17 MR. SCHROEDER: Objection.

18 A It was after the conversation.

19 Q How long after?

20 A I don't know.

21 Very quickly thereafter.

22 Q Were you still looking at your  
23 wife --

24 A Yes.

25 Q -- when the first shot was



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Edward Bienz

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fired?

A Yes.

Q How much time between the first shot and the third shot?

A There were -- they were right after each other.

Q Now, when you walked over to see your wife, and you were speaking to your wife, what direction were you looking, compass direction?

A East.

Q You were, you said, going towards your wife, so you were sort of towards the curb or the sidewalk area of Oakwood Road?

A Restate that.

Q Your right shoulder, right, or your right shoulder or right back area, was Anthony DiLeonardo's car behind your right shoulder and back?

A Are you talking where I was standing?

Q Where you're standing, and where you're looking.



1 Edward Bienz 295

2 A His car would be to the south of  
3 where I'm standing.

4 Q South?

5 A Yes.

6 Q Behind you?

7 A It's behind.

8 Q You weren't looking behind you  
9 at the time you heard these three shots?

10 A No.

11 Q You didn't have a view of  
12 Oakwood Road at the time the three shots  
13 went off?

14 A No.

15 Q Last time you were able to see  
16 Oakwood Road is after you turned in between  
17 the cars, stopping the talk to your wife?

18 A When I was talking to my wife.

19 Q So in between the time you  
20 exited the car and the time you got to where  
21 your wife was, a matter of what you have  
22 described as, I think, under ten seconds,  
23 again, did you see anything with respect to  
24 the cab?

25 A Repeat the question.

1 Edward Bienz 296

2 Q From the time that you exited  
3 the driver's side and went to go talk to  
4 your wife, did you ever have an opportunity  
5 to observe the cab?

6 A Yes.

7 Q What did you observe with  
8 respect to the cab?

9 A It had traveled backwards.

10 Q Do you know how far?

11 A Approximately three or four car  
12 lengths.

13 Q Did it stop? Did you actually  
14 see it stop, prior to going to speak to your  
15 wife?

16 A No.

17 Q The last thing you know, the cab  
18 was moving backwards?

19 A Went back about three to four  
20 car lengths.

21 Q Okay.

22 A I don't specifically remember it  
23 exact stopping.

24 I started speaking to my wife.

25 Q You don't even know if the cab

Edward Bienz

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1  
2 stopped?

3 A No.

4 Q Would it be fair to say that at  
5 the time, your perception was, this car was  
6 leaving the scene, following an angry  
7 exchange?

8 MR. CLARKE: Objection.

9 A I don't know what the car was  
10 doing.

11 I presumed it left.

12 Q That's what I'm asking you.  
13 Your perception was, the cab was  
14 leaving?

15 A I didn't know it was a cab, at  
16 the time.

17 Q But the car was leaving. That  
18 was your perception, given the facts that  
19 you observed?

20 A Yes.

21 Q Now, you're talking to your  
22 wife. She says she didn't know what  
23 happened, just an angry exchange. They were  
24 yelling at each other, right?

25 A Yes.

1 Edward Bienz 298

2 Q Next thing you know, you hear  
3 three gunshots?

4 A Yes.

5 Q Did you hear a car engine  
6 revving, prior to hearing the gunshots?

7 A No.

8 Q Did you hear anything unusual  
9 prior to hearing those three gunshots?

10 A I didn't hear anything.

11 Q From the time you exited your  
12 car to the time you walked over to see your  
13 wife and speak to her, he did you ever hear  
14 Anthony utter one word?

15 A No.

16 Q So from the time that you got to  
17 the scene and parked, to the time that you  
18 heard the first gunshot, you never heard  
19 Anthony DiLeonardo say a word?

20 A No.

21 Q You never heard the motorist,  
22 whoever it was, in that car, say a word?

23 A No.

24 Q Evenly person you heard speak  
25 was your wife, and she said something

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Edward Bienz

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about --

A Yes.

Q Then all hell broke loose, with the gunfire?

MR. SCHROEDER: Objection to form.

A The firearm was discharged.

Q Would it be fair to say, at the time the gunfire -- the gun was discharged, you had no idea who fired the gun?

A No.

Q Could you hear the direction in which the gunfire came from?

A No.

Q Did you know if it was north, south, east, west of you?

A No.

Q What do you do when you hear the gunfire?

A I covered down on my body.

Q When you say you covered down on your body, could you please describe for me how -- what you mean by that?

A I put my arm over my internal

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Edward Bienz

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organs for a second.

It scared me.

Q Understandably.

What part of your internal  
organs?

A My right side. I clenched my  
arm in.

Q When you say your right side,  
for the record, you put your arm in a fist,  
you bent your fist up to your shoulder area,  
and then you turned it in toward your chest,  
right?

A I described, I turned my arm  
into my chest, and kind of turned away.

Q When you turned away, did you  
turn north, toward the rear of your car?

A Yes.

Q When you say you crunched down,  
did you duck your head down?

A Yes.

Q Did you duck your head down  
between the cars, to use the cars as some  
sort of defense from the gunfire?

A No.



1 Edward Bienz 301

2 Q Were you -- obviously you were  
3 scared for your wife, right?

4 A Yes.

5 Q Were you focusing on your wife?  
6 Did you want to get your wife, grab your  
7 wife, protect her?

8 A When they went off, it was more  
9 instinctive to turn away and kind of  
10 crunched up.

11 Q So as natural instinct, you bent  
12 down to crunch up.

13 Could you see your wife?

14 A No. I turned away. I kind of  
15 turned almost all the way forward.

16 Q Facing the rear of your car?

17 A Yes.

18 Q So you certainly couldn't see  
19 what was going on behind you --

20 A No.

21 Q -- through the conclusion of the  
22 very last shot, right?

23 A No.

24 Q If I understand your testimony  
25 then correctly, sir, from the time you got

1 Edward Bienz 302

2 out of your car and you walked over to start  
3 to speak to your wife, you never saw Anthony  
4 DiLeonardo doing anything again, right?

5 MR. SCHROEDER: Objection.

6 A When?

7 Q From the time you got out of  
8 your car, the 5-10 seconds you walked over  
9 to speak to your wife, you never saw Anthony  
10 DiLeonardo doing anything?

11 A At some point he had sort of  
12 started walking toward the rear of his car.  
13 I didn't pay much attention to it.

14 Q When you were walking back to go  
15 in between the cars, you saw Anthony start  
16 walking towards the rear of his car?

17 A Yes.

18 Q At the same time you observed  
19 the cab backing up three or four car  
20 lengths?

21 A Yes.

22 Q But other than that, that's all  
23 you saw?

24 A Yes.

25 Q You saw Anthony DiLeonardo do

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Edward Bienz

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very, very little, with your own senses; is that right, during that exchange, up until the point the gun was fired?

A Yes. I observed what I observed.

Q With your own eyes and with your own ears?

A I visually saw what I saw happen.

Q How much time, approximately, approximately, between the first shot and the last shot?

A One right after the other.

Q How much time between the first shot and the last?

MR. CLARKE: Asked and answered.

Objection.

You can answer again.

A They were one right after the other.

Q I understand that, sir.

A However long it takes to discharge.

A second?

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Edward Bienz 304

Q I don't know. That's why I'm asking you.

A One second.

Q One second per round, or one second in total?

A Maybe one to two seconds for the three rounds, in that area.

(Whereupon, Plaintiff's 123 for identification was so marked.)

Q If you would, could you do me a favor and take a peek at what has been marked as Plaintiff's 123. I'd like you to look at that picture.

Can you tell me if you can see in that picture, the last location of the cab that you saw after backing up three or four car lengths?

MR. CLARKE: There's a cab in this photograph that I don't see. You asked for the location of the cab. There's no cab in the photograph.

MR. GRANDINETTE: I know there's no cab in the photograph.

Are you confused by my question?

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Edward Bienz 305

MR. CLARKE: Take a look at --

I'm confused by the question.

MR. GRANDINETTE: With all due respect, there's a photograph, Plaintiff's 123.

Q Do you recognize Plaintiff's 123 as being a photograph of the scene?

A Yes.

Q You see your picture in it? Do you see DiLeonardo's car in it, the two cars?

A Yes.

Q Do you see that photograph is facing southbound, correct?

MR. SCHROEDER: Objection to form.

A Yes.

Q You're able to see, within that picture, can you tell me approximately where the cab was the last time you saw it, after it backed up three or four car lengths?

MR. SCHROEDER: Not the last time you saw it.

You saw it for the whole night,

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Edward Bienz

306

at the scene.

MR. GRANDINETTE: Just related  
to my question.

Q Per your previous testimony?

A No.

It would be hard for me to put a  
location exactly where it was from the --  
from this photo.

Q You did say that you saw it  
three or four car lengths back.

A Right.

Q Is it because that he backed up  
farther than the pictures allow you to give  
an estimate?

A No.

Q The car was backed up somewhere  
within the photograph itself, right?

A Yes.

Q So could you then identify for  
me approximately -- it doesn't have to be  
the exact location --

MR. CLARKE: He told you he  
can't do it.

Q -- approximately where the cab



1 Edward Bienz 307

2 was when you last saw it?

3 A No.

4 MR. SCHROEDER: Objection to  
5 form.

6 A I can't just put an X on the  
7 approximate spot.

8 Q Why can't you estimate four car  
9 lengths behind Mr. DiLeonardo's car?

10 MR. CLARKE: He told you, four  
11 car lengths. That's what he's telling  
12 you.

13 Q Why can't you estimate visually  
14 on that photograph?

15 Is there a reason you can't do  
16 that?

17 MR. CLARKE: Argumentative.  
18 Objection.

19 Next question.

20 Q What's the reason you can't do  
21 that?

22 A The closer the objects are from  
23 the photo, the more space they take up, and  
24 further back, the distance -- further  
25 distance the photograph is taken, that

1 Edward Bienz 308

2 lapses more distance. I just can't.

3 Q You mean to tell me, you can't  
4 estimate?

5 MR. CLARKE: Argumentative.

6 Don't be fresh. It's  
7 argumentative. You know better than  
8 that.

9 Q You, sir, you're trained in  
10 speeds and distances.

11 MR. CLARKE: I'm not a  
12 mechanical artist.

13 Q Were you trained in speed and  
14 distances?

15 A In what respect?

16 Q Were you trained in speed and  
17 distances at the academy?

18 A Yes.

19 (Whereupon, Plaintiff's 124 for  
20 identification was so marked.)

21 Q Let's try it using Plaintiff's  
22 Exhibit 124.

23 Do you recognize Plaintiff's  
24 124?

25 A Yes.

1 Edward Bienz 309

2 Q Was the cab within the confines  
3 of that photograph?

4 MR. CLARKE: At what point?

5 MR. GRANDINETTE: After backing  
6 up three or four car lengths.

7 A Possibly.

8 Q You're not sure?

9 A Yes.

10 Q So, the cab then could have been  
11 past the driveway of this house when you  
12 last saw it, or it could have been in front  
13 of the driveway when you last saw it; fair  
14 to say?

15 MR. MITCHELL: Objection.

16 MR. GRANDINETTE: Again, this is  
17 an estimate.

18 MR. CLARKE: Objection to the  
19 form.

20 You can answer.

21 A It was approximately three to  
22 four car lengths behind the white Infiniti.

23 Q So it was three or four car  
24 lengths behind the white Infiniti?

25 A Yes.

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Edward Bienz

310

Q So you ducked down.

Are prior to the shots being fired, you didn't hear Mr. DiLeonardo say anything, right?

A No.

Q So you absolutely never heard him say, stop, police?

A I didn't hear him say anything.

Q Or words to that effect?

A No.

Q At that point in time, how many feet away from you -- the last time you saw him, how many feet apart were you?

MR. MITCHELL: Saw who?

Q Anthony DiLeonardo?

A Ten feet, 15 feet.

Q Fair to say that if he yelled something, stop, police, you would have heard it?

A I don't know. I wasn't paying attention to him.

Q Somebody yelled, stop, police, ten feet away from you, would you have heard it?

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Edward Bienz

311

A Could have.

MR. MITCHELL: Objection to the  
form.

Q You also, would it be fair to  
say, never saw, prior to the first shot, a  
shield on Anthony?

A No.

Q Based upon the fact that you  
never heard Anthony say, stop, police, saw a  
shield on him or knew that he had a weapon  
that evening, it's fair to say, you had no  
idea who had fired that weapon, right?

A I didn't know who.

Q Is it possible then that given  
the fact that there were three shots that  
you heard, that more than one person may  
have discharged a weapon?

A I don't know who discharged the  
weapon.

Q Which means, if you heard three  
shots, and you had no idea who fired a gun,  
that more than one person could have fired a  
gun, right?

A Could have.

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Edward Bienz

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Q So you didn't know how many people discharged a weapon, after hearing the three rounds, right?

A I didn't know how many people.

Q How long did you remain in a crouched position?

A A second.

Q After that second, what do you see? What happens next? What do you see, what do you hear, what do you do?

A I hear brakes lock up.

Q By brakes lock up, what do you mean? Do you hear a break, or do you hear tires on the pavement?

A I heard the tires, and like the ABS sound.

Q You hear the ABS sound. Could you describe to me what an ABS sounds like?

A When the brakes, like, lock.

Q Okay.

A It makes like a thumping noise.

Q What kind of thumping noise was this? Was this a very quick thump? Was it



1 Edward Bienz 313

2 a prolonged thump?

3 A It was a braking noise, quick.

4 Q A quick thump.

5 How long did that last?

6 A A second.

7 Q A second. Okay.

8 Did you immediately associate  
9 that with an ABS lockup?

10 A Just sounded like brakes and  
11 tires on a car. Sounds like car tires  
12 stopping.

13 Q Let's talk about car tires  
14 separately.

15 Did you hear screeching of tires  
16 on pavement?

17 A Just a quick noise.

18 Q I need to know your definition  
19 of quick.

20 A second?

21 A Yes.

22 Q How long after the first shot  
23 until you heard this thumping and  
24 screeching?

25 A Three seconds, four seconds.

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Edward Bienz

314

Q So now we're still under a minute, right? Well under a minute, according to your calculations of time?

MR. CLARKE: From what to what?

Q From the time that you stopped up to the time you hear the gunfire and tires screeching.

More than a second?

A Yes.

Q What happens next?

MR. SCHROEDER: What does he observe next?

Q What was next? What did you observe? What do you hear? What did you do.

A I see Anthony running towards the vehicle.

Q So, you get up and you turn around, and you face the southerly direction?

A I was never down.

I turned. I seen him running.

Q Are you still sort of crouched down in between the cars?

1 Edward Bienz 315

2 A I never crouched down. I kind  
3 of scrunched, is the best way I can describe  
4 it.

5 Q So when you scrunched --  
6 How tall are you, by the way?

7 A Six-2.

8 Q Okay. So you're a big guy.  
9 Could you look over the  
10 Infiniti, you know, his car, his white car?  
11 You were in between the cars,  
12 right?

13 A Could I see over the top?

14 Q Were you looking over the top?  
15 Were you looking through the windshield?

16 A Through the windshield.

17 Q I'm sorry. Bad question.

18 When you said you turned and you  
19 observed Anthony running towards the car,  
20 right --

21 A Yes.

22 Q -- what, if anything, were you  
23 looking through? Were you looking over the  
24 car or through his windshield?

25 A I don't know.